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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

METROPOLITAN LIFE INSURANCE COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the judgment of the Court of Appeals for the First Circuit entered in this case.

OPINIONS BELOW

The opinion of the court of appeals (Appendix A, pp. 18–27 below) is reported at 327 F. 2d 906. The findings of fact, conclusions of law, and order of the Board (J.A. 4a–6a)[1] are reported at 142 NLRB No. 60. The Board's decision and direction of election in the underlying representation proceeding (J.A. 14a–16a) are unreported.

[1] "J.A." refers to the Joint Appendix printed for the use of the court below and filed with this petition.

JURISDICTION

The judgment of the court of appeals was entered on February 17, 1964 (Appendix A, p. 28 below). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Section 9(c)(5) of the National Labor Relations Act provides that, in determining the appropriate bargaining unit, "the extent to which the employees have organized shall not be controlling." The National Labor Relations Board found that the Woonsocket, Rhode Island, district office of the Company was a separate administrative unit and therefore designated it as the appropriate unit.

The question presented is whether the court of appeals was justified in overturning the Board's selection of this unit, concededly proper on the basis of the reasons given by the agency, on the ground that the Board's definitions of the appropriate unit in six other cases involving employers in the insurance industry, each approving a unit proposed by the union, established that in all seven cases the Board had given controlling consideration to the extent of union organization.

STATUTE INVOLVED

The relevant portions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth in Appendix B, p. 29 below.

STATEMENT

A. THE BOARD PROCEEDINGS

1. *The Representation Case.*—On July 9, 1962, the Insurance Workers International Union, AFL–CIO ("the Union") filed a representation petition with the Board pursuant to Section 9(c) of the Act, requesting certification as the bargaining representative of the debit insurance agents at Metropolitan Life Insurance Company's district office in Woonsocket, Rhode Island (J.A. 1a, 15a, note 2). The Woonsocket office is in the New England Territory which encompasses Maine, Vermont, New Hampshire, Massachusetts, and Rhode Island. There are 75 district offices in this territory, employing 1,753 agents. The Company has 8 district offices, plus two detached offices which are under the administrative supervision of district offices, in the State of Rhode Island. These Rhode Island offices employ 219 agents, of whom the Woonsocket office employs 23. The nearest district office to Woonsocket is in Pawtucket, twelve miles away (J.A. 176a–178a).

At the hearing, the Company took the position that the unit sought by the Union was inappropriate, and that only the following could constitute an appropriate unit: (1) all the Company's offices in the United States; (2) all its offices in the New England Territory; or (3) all its offices in the State of Rhode Island (J.A. 15a, 31a–32a). The parties stipulated that the record in a prior representation case (Case No. 4–RC–4865) involving the Company's offices in Wilmington,

Delaware,[2] be incorporated by reference into the record in this case, with certain modifications (J.A. 27a, 175a–183a). The record thus incorporated reveals the following concerning the Company's general operations:

The Company, a New York corporation with its "home office" in New York City, is engaged in the sale and issuance of insurance policies throughout the United States and Canada (J.A. 30a, 38a). It maintains numerous district offices, and, for administrative purposes, it has divided its offices in the United States into 14 territorial divisions (J.A. 39a–40a, 46a–47a). Each division is headed by a "superintendent of agencies" who reports directly to a Company vice president (J.A. 40a). The Company's operations are highly centralized and all matters of general overall business policy—relating to the terms and conditions of various policies as well as to the management of the district offices and supervision of agents—are determined at the New York home office (J.A. 38a–39a, 49a, 53a). The superintendents of agencies, who operate out of the home office, are responsible for implementation of these Company poli-

[2] In that case, the Board found that the Company's two district offices in the Wilmington metropolitan area constituted an appropriate unit and directed an election in that unit. *Metropolitan Life Insurance Co.*, 138 NLRB 565 (reprinted in Appendix C, pp. 30–35 below). The Union won the election in the Delaware case, and the Board's subsequent order requiring the Company to bargain with the Union was enforced by the Third Circuit. *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 328 F. 2d 820, pending on petition for a writ of certiorari, No. 982, this Term.

cies and procedures in their particular territories (J.A. 39a–49a). In the course of their duties they make periodic visits to many of the offices in their areas (J.A. 122a–123a, 39a–42a).

Each district office is operated under the supervision of a manager who is directly responsible to the superintendent of agencies of his territory (J.A. 47a). The manager is, in the words of A. Rogers Maynard, the Company's second vice president, the "chief executive of his particular district" (J.A. 164a). He is the "principal line officer in the district" and holds immediate supervisory authority over the agents in the office (J.A. 165a–166a, 47a–49a, 64a, 105a–107a). A percentage of a manager's compensation is geared to the business done by his office as a whole; the remainder of his compensation is based on a fixed salary and commissions on policies he himself sells (J.A. 103a–105a).

While a manager does not have authority formally to hire agents for his district, he normally solicits applications for openings as they arise and then conducts a personal interview and orders retail credit and medical reports on the applicant (J.A. 54a–55a, 97a–100a, 158a–168a). If the manager decides that the applicant is likely to become a satisfactory agent, he forwards his recommendation and the individual's application to the superintendent of agencies for final decision; the manager's recommendation is followed approximately 75 percent of the time (J.A. 54a–55a, 97a–100a). After undergoing initial training for a period of two weeks in New York, the new agent receives additional training under the guidance and

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direction of the assistant manager and manager in his district (J.A. 55a–56a, 65a–66a, 93a).

Although the agent spends the greater part of his time selling insurance in his assigned territory, he is required to report to the district office twice a week[3] and whenever else the manager directs (J.A. 51a–53a, 65a–66a, 85a–87a). A regular review is made of the agent's performance by the manager,[4] who, although he cannot discharge the agent, can recommend the latter's discharge to the superintendent of agencies and may accept an agent's resignation (J.A. 57a–59a, 63a–65a, 128a). In addition, the manager may order an audit of the agent's accounts whenever he believes it necessary; if there is a deficiency of $75 or more the manager is required to suspend him until further notice (J.A. 64a–65a, 130a–131a).

All labor relations policies are established at the home office, and all agents are subject to the same wage policies, employee benefits, and working conditions. There is virtually no interchange or transfer of agents among the various district offices, and there is no business or social contact among agents except

[3] At these times the agent attends regular meetings conducted by the manager to explain the latest Company directives, and he deposits premiums, turns in applications for policies, and picks up mail and other communications (J.A. 63a–65a).

[4] The manager is authorized to discuss "all matters pertaining to the general performance of their [the agents'] work, particularly with respect to the quality and quantity of insurance canvassed for and procured, the general accuracy with which they keep their books, records, and accounts, the diligence with which they conserve the Company's business, and assist holders of policies of the Company in realizing the benefits provided by their policies" (J.A. 63a–65a).

on the level of the individual district office. All bidding for open agencies is limited to the agents of the particular district office where the opening occurs (J.A. 66a–68a).

Upon these facts, the Board concluded in the *Wilmington* case that "the individual district office is in effect a separate administrative entity through which the Employer conducts its business operations, and therefore is inherently appropriate for purposes of collective bargaining." 138 NLRB at 567 (Appendix C, p. 33 below). It further pointed out that, although a single district office was an appropriate unit, this did "not preclude the grouping of such offices where such grouping is justified by cogent geographic considerations," *Ibid.* Accordingly, in that case, the Board grouped the Company's two district offices in the Wilmington metropolitan area into one unit, but excluded the Company's other district office in Delaware, located at Dover, 46 miles from Wilmington, *Id.* at 566–567 (Appendix C, pp. 31, 33–34 below). Applying these principles here, the Board held that the employees located at the Woonsocket district office constituted an appropriate bargaining unit. The Board said that the nearest district office to Woonsocket was one in Pawtucket, 12 miles away (J.A. 15a, note 2, 188a). It accordingly directed an election among the debit insurance agents at the Company's Woonsocket district office, to determine whether they desired the Union as their representative (J.A. 15a–16a). The Union won the ensuing election and was certified by the Board as the bargaining representative (J.A. 8a).

2. *The Unfair Labor Practice Case.*—Following certification, the Union wrote to the Company on December 4, 1962, requesting that it bargain with the Union as representative of the employees in the Woonsocket office. On December 11, 1962, the Company answered that it would not recognize and bargain with the Union because the Board's unit determination was erroneous (J.A. 8a). The Union thereupon filed unfair labor practice charges with the Board. The Board, adhering to its prior unit determination, held that the Company violated Section 8(a) (5) and (1) of the Act by refusing to recognize and bargain with the Union (J.A. 4a, 9a). The Board directed the Company to cease and desist from its unfair labor practices, to bargain with the Union upon request, and to post appropriate notices (J.A. 5a, 9a–10a).

B. THE COURT OF APPEALS' DECISION

The court of appeals declined to enforce the Board's order. In its view the Board, in finding that the Woonsocket district office was an appropriate unit, was entirely controlled by the extent of the Union's organization, contrary to Section 9(c)(5) of the Act (Appendix A, pp. 18–27 below).

REASONS FOR GRANTING THE WRIT

Although the question of law presented is a narrow one, the decision below conflicts, in both reasoning and result, with decisions in the Third, Fourth, and Sixth Circuits. This conflict unsettles the administration of the National Labor Relations Act with respect to hundreds of thousands of employees in the

insurance industry. It should therefore be resolved by this Court.

1. Section 9(b) of the Act empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." In determining what is the appropriate unit in a particular case, the Board, with court approval, has customarily looked to such factors as the community of interest among the employees sought to be represented; whether they comprise a homogeneous, identifiable, and distinct group; the previous history of bargaining; and the geographic proximity of various parts of the employer's operation.[5] Section 9(c)(5), which was added to the Act in 1947, was not intended to invalidate units which would satisfy those traditional tests of appropriateness; it was designed merely to preclude units which could be explained on no ground other than the extent of the union's organization. Thus, the language of Section 9(c)(5) simply provides that "the extent to which the employees have

[5] *May Department Stores Co.* v. *National Labor Relations Board*, 326 U.S. 376, 380; *Foreman & Clark, Inc.* v. *National Labor Relations Board*, 215 F. 2d 396, 406 (C.A. 9), certiorari denied, 348 U.S. 887; *Harris Langenberg Hat Co.* v. *National Labor Relations Board*, 216 F. 2d 146 (C.A. 8); *The Texas Pipeline Co.* v. *National Labor Relations Board*, 296 F. 2d 208, 212–213 (C.A. 5); *National Labor Relations Board* v. *West Kentucky Coal Co.*, 152 F. 2d 198, 202 (C.A. 6); *National Labor Relations Board* v. *Smith*, 209 F. 2d 905 (C.A. 9); Twenty-eighth Annual Report of the National Labor Relations Board (G.P.O. 1964), pp. 50–53.

organized shall not be controlling" (emphasis added). *National Labor Relations Board* v. *Quaker State Life Insurance Co.* 319 F. 2d 690, 694 (C.A. 4); *Metropolitan Life Insurance Co.* v. *National Labor Relations Board,* 328 F. 2d 820, 825–826 (C.A. 3), pending on petition for a writ of certiorari, No. 982, this Term.[6] See also H. Rep. No. 245, 80th Cong., 1st Sess. 37–38, 1 Leg. Hist. of the Labor Management Relations Act, 1947 (G.P.O. 1948) 328–329; 93 Cong. Rec. 6860, 2 Leg. Hist. 1625.

In *Metropolitan Life Insurance Co.,* 56 NLRB 1635 (1944), the Board ruled that it would not establish units of insurance agents less than state-wide or company-wide in scope. In 1961, however, in *Quaker City Life Insurance Co.,* 134 NLRB 960, this policy was reversed. The Board held that it would apply the same principles in establishing bargaining units for insurance agents as it did for employees in other industries, and would find units less than state-wide or company-wide in scope to be appropriate if such units were justified under traditional unit criteria. Thus, in *Quaker City* itself, the Board, finding that the district office was a distinct administrative division of the insurance company,[7] concluded that

[6] The government is filing a memorandum in the *Metropolitan* case—which raises the same issue as the present case—stating that it does not object to the grant of the petition for certiorari in that case if certiorari is also granted here.

[7] The Board emphasized "the day-to-day operation of the district office * * *, the overall immediate supervision by the district manager, the lack of contact or interchange among employees of the various district offices, and the absence of any administrative subdivision between the home office and the district office * * *." 134 NLRB at 962.

the insurance agents in a single district office constituted an appropriate bargaining unit, and directed an election in that unit. Applying the *Quaker City* policy, the Board has found a single district office to constitute an appropriate unit in the instant case (J.A. 14a) and in *Western and Southern Life Insurance Co.*, 138 NLRB 538. It has also found, under that policy, that units consisting of several district offices are appropriate where the union requests them and they comprise a separate and distinct geographic area. See *Metropolitan Life Insurance Co.-Wilmington*, 138 NLRB 565 (two district offices in Wilmington, Delaware); *Metropolitan Life Insurance Co.-Cleveland*, 138 NLRB 512 (six district offices in Cleveland, Ohio, and three suburban offices); *Metropolitan Life Insurance Co.-Sioux City*, 138 NLRB 734 (one district office in Sioux City, Iowa, and two detached offices in Fargo, North Dakota, and Sioux Falls, South Dakota); *Metropolitan Life Insurance Co.-Chicago*, 144 NLRB No. 15 (all of the 33 district offices in Chicago); *Equitable Life Insurance Co.*, 138 NLRB 529 (two district offices in Cleveland and a detached office in Lorain, Ohio).

The Board's application of its *Quaker City* policy in the insurance industry has been approved by the Courts of Appeals for the Third, Fourth, and Sixth Circuits. *National Labor Relations Board* v. *Quaker City Life Insurance Co., supra*, 319 F. 2d 690 (C.A. 4), sustaining the single district office unit established in 134 NLRB 960; *Metropolitan Life Insurance Co.* v. *National Labor Relations Board, supra*, 328 F. 2d 820 (C.A. 3), sustaining the unit of two district offices

established in *Metropolitan-Wilmington*, 138 NLRB 565; *National Labor Relations Board* v. *Western and Southern Life Insurance Co.*, 328 F. 2d 891 (C.A. 3), sustaining the single district office unit established in 138 NLRB 538;[4] *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, C.A. 6, No. 15366, decided April 11, 1964, sustaining the unit of six city district offices and three suburban offices established in *Metropolitan-Cleveland*, 138 NLRB 512.

2. The result reached by the court below directly conflicts with the decisions of the Third and Fourth Circuits in the *Western and Southern* (separate units in McKeesport and Wilkinsburg, Pennsylvania) and *Quaker City* (a unit in Alexandria, Virginia) cases, where units consisting of single district offices were sustained. Here, on substantially identical facts—the sole district office of an insurance company in a particular city—the First Circuit overturned the Board's determination.

The decision below also conflicts in its essential reasoning with decisions of other circuits in cases involving bargaining units in the insurance industry. The Board found that the Woonsocket office was a separate unit on the ground that the Company's district offices constituted separate administrative entities. It said that such offices may not be grouped where "there is no recent history of collective bar-

[4] The Third and Sixth Circuit's opinions in *Western and Southern Life Insurance Co.* and *Metropolitan-Cleveland* are reprinted in Appendix D, pp. 36–42. The Third Circuit's opinion in *Metropolitan-Wilmington* is reprinted in the petition in that case (No. 982, this Term).

gaining, no union seeking a larger unit, and the district office sought is located in a separate and distinct geographical area * * *" (J.A. 15a, note 2).[9] None of these criteria—except for the factor that no union was seeking a larger unit—has anything to do with the extent of the union's organization.

The court below did not find that the unit determined by the Board was inappropriate under the criteria stated in the Board's opinion. Instead, the court denied that the Board had actually applied those criteria in exercising its discretion. The court found that the Board had in fact considered the extent of organization as controlling, contrary to Section 9(c)(5). The court reasoned (1) that in the seven insurance cases beginning with *Quaker City* the Board had invariably determined that the appropriate unit was that requested by the union; (2) that those decisions could not be reconciled on the basic of geographic criteria; and (3) that the union here had requested the district office unit only after an unsuccessful attempt to organize on a broader basis.

In the *Metropolitan-Wilmington* and *Metropolitan-Cleveland* cases, *supra*, the Third and Sixth Circuits considered the identical argument, made by the same employer, and rejected it upon the ground that the Board's decisions were based upon the reasons stated

[9] The Board also stated that it was applying the standards set forth in its decision in the *Metropolitan-Wilmington* case which outlined the facts covering the Company's district offices and explained why each office would constitute an appropriate unit (see pp. 3–4, 7, above). Further, it noted that the next nearest district office to Woonsocket was in Pawtucket, 12 miles away.

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in its opinions and did not make extent of organization controlling. Similarly, in both the *Metropolitan-Wilmington* and *Metropolitan-Cleveland* cases, the courts of appeals rejected the view that the union's reason for proposing a unit was relevant in assessing the validity of the unit ultimately established by the Board.[10] As the Third Circuit stated in the *Metropolitan-Wilmington* case (328 F. 2d at 826):

> Whether the employees were controlled by the extent of their organization when they petitioned the Board is not the issue. Rather, it is whether the Board in determining a unit's appropriateness was so controlled.

Thus, on both of these grounds the decision below conflicts with those in two other circuits.

3. The Board's unit determinations in insurance cases follow a logical course entirely consistent with the statute. It is elementary that there may be more than one appropriate unit, *i.e.*, that there may be more than one way in which the employees of a given employer appropriately may be grouped for purposes of collective bargaining under traditional criteria for determining the bargaining unit. This is true in the insurance industry. The Board's position is that, since the individual district office constitutes a separate administrative unit analogous to the plant unit of a multi-plant industrial concern, it is an appropriate unit and will therefore be certified un-

[10] The court below relied on evidence in the record in the *Metropolitan-Cleveland* case, which was incorporated by stipulation in the record in this case, in order to show the policy of the union here (Appendix A, p. 27 below).

less there are other factors, consistent with traditional unit criteria, which justify joining two or more district offices in a single unit. In the *Quaker City, Western and Southern Life*, and present cases the Board established units consisting of single district offices, since there was no basis for combining offices. The *Metropolitan-Sioux City* case belongs in this group; the unit comprised a single district office and its detached sub-offices because the detached offices are administered as part of the district office.

A unit composed of two or more district offices is also an appropriate unit where there is a reasonable degree of geographical coherence. If the offices are not too distant and their areas are adjacent (or at least not too widely separated), then, in the absence of any strong opposing considerations, the conventional factors for determining an appropriate unit would make a combination appropriate. In such cases—where either the district office or a combination of offices might be found "appropriate" on the basis of factors other than the extent of organization—the Board takes the union's request into account in deciding which to certify. There is little sense in putting adjacent offices, organized by the same union, within different bargaining units where a combination would be equally appropriate, and, if enough offices in a city or metropolitan area are organized, it would be reasonable to combine the group in a single unit.

This was the course followed by the Board in combining two or more district offices in a single unit in the *Equitable Life, Metropolitan-Wilming-*

ton, Metropolitan-Cleveland, and Metropolitan-Chicago cases. The unit in *Equitable Life* consisted of that company's only two offices in Cleveland and a detached office in Lorain, Ohio, which was not a separate entity. The *Wilmington* ruling combined the only two offices in the city; the only other office in the State was geographically separated. In the *Chicago* case the Board joined all the offices within the city. In the *Cleveland* case the Board combined all the offices within the city with suburban offices much closer to the center of the city than many of the suburban offices excluded from the Chicago unit.[11]

Section 9(c)(5) prohibits only the establishment of bargaining units lacking justification in other traditional criteria. Both the words of the statute and the legislative history show plainly that Congress did not intend to exclude consideration of the extent of employee organization. See pp. 9–10 above. It was, therefore, permissible for the Board to take this factor into account, along with others, in deciding whether to certify single district offices or a combination of districts as the bargaining unit.

4. The determination of bargaining units for agents in the insurance industry is of considerable import-

[11] In the Cleveland case, the three suburban offices included were situated 8 or 9 miles from the center of the city. 138 NLRB at 514. In the Chicago case, to include all of the offices in the Chicago metropolitan area would have required including district offices as far away as 39 miles from the center of the city. In contrast, the unit chosen, consisting of the 33 district offices within the political limits of the city and excluding the 14 suburban offices, produced a relatively compact grouping, with all offices within 14 miles of the center of the city. See Company Exhibit 3A–3B in *Metropolitan-Chicago*, 144 NLRB No. 15, Case No. 13–RC–9051.

ance in the administration of the Act. In 1960, there were 1,444 life insurance companies in the United States, employing about 475,000 persons, approximately one-half of whom were agents. *Life Insurance Fact Book*, 1962 (Institute of Life Insurance), pp. 99–100. The Board has rendered formal decisions in about 20 cases involving the *Quaker City* policy beginning in 1961 and the policy has been applied by the Board's regional directors in many other insurance cases. The decision of the court below unsettles this policy. For the court determined that the Board's decisions in the insurance field are invalid because, despite the statements in the Board's opinions to the contrary, they are based on the extent of the union's organization. A decision so affecting a substantial industry, at least in the First Circuit, warrants review by this Court.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be granted.

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MAY 1964.

APPENDIX A

United States Court of Appeals for the First Circuit

No. 6154

METROPOLITAN LIFE INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

PETITION TO REVIEW AND CROSS-PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before WOODBURY, *Chief Judge,* and HARTIGAN and ALDRICH, *Circuit Judges.*

OPINION OF THE COURT

February 17, 1964

WOODBURY, *Chief Judge.* On petition of Insurance Workers' International Union, AFL-CIO, the National Labor Relations Board in a proceeding under § 9(c) of the Act, 29 U.S.C. § 159(c), certified the Union as the bargaining representative of all debit insurance agents, including all canvassing regular and office account agents, at Metropolitan Life Insurance Company's district office in Woonsocket, Rhode Island. The Company deliberately refused to bargain collectively with the Union in order to challenge the appropriateness of the employee unit certified by the Board. See *American Federation of Labor* v. *NLRB,* 308 U.S. 401, 411 (1940); *Pittsburgh Plate Glass Co.* v. *NLRB,* 313 U.S. 146, 154 (1941). The Company

agrees with the Board's classifications of employees included and excluded. That is to say, the Company does not contend that the unit certified by the Board contains ineligible employees or employees whose interests are antagonistic. Its contention is that an employee unit consisting of the debit insurance agents working out of only its one Woonsocket district office is inappropriate. Its position is that the only appropriate unit would encompass either 1) all of its offices in the United States, or 2) all of its offices in its New England Territory (Maine, New Hampshire, Vermont, Massachusetts and Rhode Island), or 3) all of its offices in Rhode Island. Furthermore, it says that in determining that the debit insurance agents at only one of its eight district offices in Rhode Island constituted an appropriate unit for collective bargaining, the Board treated as controlling the extent to which the Union had so far organized its employees in Rhode Island in clear violation of § 9(c)(5) added to the National Labor Relations Act by the Labor Management Relations Act, 1947, 61 Stat. 144 (1947), 29 U.S.C. § 159(c)(5), quoted in its pertinent context in the margin.[1]

The Board's policy for determining appropriate bargaining units of debit insurance agents has not been consistent over the years. In *Metropolitan Life*

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[1] Sec. 9.

"(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof:

* * * * * *

"(c)(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

Ins. Co., 56 NLRB 1635 (1944), the Board announced that, departing from its previous policy, it would in the future, in the absence of unusual circumstances, avoid setting up units of debit insurance agents smaller than state-wide in scope. It said:

> "Based upon the extent of organization among employees of an employer, we have frequently found appropriate for bargaining purposes small groups of employees with a provision for revision of a unit upon a later showing of broader organization. We believe, however, that the principle upon which we have set up such units is not controlling in the instant case. Organization among insurance agents is comparatively recent, but is steadily growing. The tendency of such organization is toward State-wide units. * * * Thus, the rapid growth of union organization among insurance agents makes it clearly appear that provisional units less than State-wide in scope are, under ordinary circumstances, unnecessary to make collective bargaining reasonably possible for them if they desire it. Accordingly, we are of the opinion that, in the absences of unusual circumstances, the practice of setting up units for insurance agents smaller that [sic] State-wide in scope should be avoided. In the instant case, since the * * * [unions] are all actively engaged in a broad organizational program in Ohio, and since it may reasonably be anticipated that one of these organizations may in the near future extend its membership to State-wide proportions, we are of the opinion that it will not effectuate the policies of the Act to set up city-wide units for employees of the Company in Ohio at this time." *Id.* at 1639–1640.

In 1961 a majority of the Board in *Quaker City Life Ins. Co.*, 134 NLRB 960, changed the policy the Board had established in the *Metropolitan Life Ins.*

Co., case in 1944 by determining that the debit insurance agents of Quaker City's one district office in Alexandria, Virginia, constituted an appropriate bargaining unit. The majority in the *Quaker City* case quoted from the language quoted above from the *Metropolitan Life* case and said:

> "Clearly this language of the *Metropolitan Life* case indicates that the rule was adopted *solely* in anticipation of broader organization on a companywide or statewide basis, which at that time seemed imminent. As a practical matter, however, such statewide or companywide organization has not materialized, and the result of the rule has been to arrest the organizational development of insurance agents to an extent certainly never contemplated by the Act, or for that matter, by the Board that decided the *Metropolitan Life* case. There is no longer any rational basis for applying different rules of organization to the insurance industry than are applied to other industries. The rule was adopted for the purpose of permitting organization on a statewide or employerwide basis, which did not develop as anticipated. Contrary to our dissenting colleagues, we regard this as a valid reason for changing the rule. Obviously, when the purpose for which a rule has been established fails, the rule should also fail. This is especially so with respect to a rule which unfairly prejudices the collective-bargaining rights of employees. Accordingly, in the future, the Board's policy will be not to preclude the organization of insurance agents into units of less than employerwide or statewide scope, and we shall apply our normal unit principles to the cases as they arise. In the instant case, upon the record as a whole, and especially in view of the autonomous day-to-day operation of the district office here, the overall immediate supervision by the district manager, the lack of

> contact or interchange among employees of the various district offices, and the absence of any administrative subdivision between the home office and the district office, we find the district office unit to be appropriate."
>
> *Quaker City Life Ins. Co.*, 134 NLRB 960, 962 (1961).

The two dissenting members of the Board said that they could see "no valid reason for departing from the *Metropolitan Life* rule which the Board adopted in 1944." *Id.*

The United States Court of Appeals for the Fourth Circuit, Judge Boreman dissenting, enforced an order of the Board requiring Quaker City Life Insurance Company to bargain collectively with the same union involved herein as the bargaining representative of the unit certified by the Board in its underlying representation proceeding. *NLRB* v. *Quaker City Life Insurance Company*, 319 F. 2d 690 (C.A. 4, 1963), *enforcing* 138 NLRB 61 (1962).

In subsequent cases a majority of the Board, with the same two members dissenting, certified as appropriate units consisting of nine of Metropolitan's district offices in the Cleveland, Ohio, metropolitan area (six offices in the City and three suburban offices eight or nine miles distant), *Metropolitan Life Ins. Co.*, 138 NLRB 512 (1962), [unfair labor practice decision, 141 NLRB No. 96 (1963)] *on appeal to Sixth Circuit*, Case No. 15366; two of Metropolitan's three district offices in Delaware, *Metropolitan Life Ins. Co.*, 138 NLRB 565 (1962), [unfair labor practice decision, 141 NLRB No. 37 (1963)] *on appeal to Third Circuit*, Case No. 14390; Metropolitan's single district office in Sioux City, Iowa, together with two detached offices under its administrative control in Fargo, North Dakota, and Sioux Falls, South Dakota, 284 and 120

miles distant, respectively, from Sioux City, *Metropolitan Life Ins. Co.*, 138 NLRB 734 (1962); and all of Metropolitan's district offices within the political limits of the City of Chicago, thereby excluding suburban offices even though six of the thirty-three city district offices had territories extending beyond the city limits and three of the fourteen suburban offices had territories extending into the city. *Metropolitan Life Ins. Co.*, 144 NLRB No. 15 (1963). In *Equitable Life Ins. Co.*, 138 NLRB 529 (1962), the Board determined appropriate a unit consisting of two district offices in Cleveland, Ohio, with a detached office in Lorain, Ohio, 28 miles away. And in this case the Board majority relying on prior decisions determined that one district office out of eight in a small densely populated state constituted an appropriate bargaining unit. The two dissenting members of the Board merely referred to their dissents in the *Quaker City Life Ins. Co.* case and in others in which they had not only reiterated that they saw no reason to depart from the policy established in the *Metropolitan Life* case of 1944, but had said that it appeared to them that the majority's unit determination was based upon the union's extent of organization of the debit agents involved.

We are very well aware that § 9(b) of the Act confers such broad discretion on the Board that a unit determination by it "if not final, is rarely to be disturbed." *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 491 (1947); *International Typographical Union Local 38* v. *NLRB*, 278 F. 2d 6, 10 (C.A. 1, 1960), *aff'd in part, rev'd in part*, 365 U.S. 705 (1961). But we would be remiss in our duty as an enforcing court should we overlook or ignore an evasion by the Board of the command laid upon it by § 9(c)(5), *supra*.

We are seriously handicapped in this case by the Board's failure to articulate specific reasons for its unit determination. It merely said in a footnote to its decision and direction of election:

> "The Employer has eight district offices and two detached offices in Rhode Island, and has only one district office in Woonsocket. The nearest district office is located 12 miles away in Pawtucket. In the prior proceeding in Case No. 4–RC–4865, based on the same record incorporated by reference herein, we found that each of Employer's individual offices was in effect a separate administrative entity through which the Employer conducted its business operations, and therefore was inherently appropriate for purposes of collective bargaining. See *Metropolitan Life Insurance Company,* 138 NLRB No. 73.[2] Applying the tests set forth therein, we find that, since there is no recent history of collective bargaining, no union seeking a larger unit, and the district office sought is located in a separate and distinct geographical area, the employees located at the Woonsocket district office constitute an appropriate unit. See also *Metropolitan Life Insurance Company,* 136 NLRB No. 87."[3]

Not only do the cases cited by the Board majority not directly support its decision, but also the criterion of location in a separate and distinct geographical

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[2] This is Case No. 4–RC–4865 reported 138 NLRB 565 (1962) in which the Board majority determined that two of Metropolitan's three district offices in Delaware constituted an appropriate bargaining unit.

[3] This is a mis-citation. No. 87 is reported 138 NLRB 734 and is the decision in which the Board majority determined that Metropolitan's single district office in Sioux City, Iowa, together with its two detached offices in Fargo, North Dakota, and Sioux Falls, South Dakota, constituted an appropriate bargaining unit.

area is not a criterion consistently applied by the Board as its decisions in Metropolitan's Cleveland and Chicago cases cited herein above clearly demonstrate.

In the Chicago case the Board majority said:

> "While 6 of the employer's 33 offices in the city of Chicago have territories extending beyond the city limits, and 3 of the 14 suburban offices have territories extending into the city, we do not regard this factor as undermining the appropriateness of a unit confined to the city because the territorial boundaries of district offices may be subject to frequent change. Because of this, the Board has relied not upon territorial boundaries but upon the physical location of the individual offices as the yardstick in determining the geographic appropriateness of the unit." *Metropolitan Life Ins. Co.*; 144 NLRB No. 15 (1963).

At first blush there is a certain plausibility to this reasoning despite doubts that city boundaries provide a more satisfactory basis for determining a separate and distinct geographical area than do the business-prescribed areas delegated to each company office or the metropolitan area which has developed through natural growth.[4] Plausibility fades, however, upon consideration of Metropolitan's Cleveland case wherein the Board majority had previously decided that the Cleveland metropolitan area constituted an ap-

[4] As the dissenting members said: "If the appropriateness of insurance agents' units is to be determined by geographic considerations, we think it would be more reasonable to be guided by the metropolitan, or natural, confines of a geographic area, rather than the political limits of a city which are artificial and may be arbitrarily drawn * * *." *Id.*

propriate unit and certified a combination of six offices in the city and three in the suburbs, *Metropolitan Life Ins. Co.* 138 NLRB 512 (1962). Why there should be a community of interest among Metropolitan's agents working from both city and suburban offices in Cleveland but no community of interest among its agents working in both city and suburban offices in Chicago is not explained by the Board majority and is beyond our comprehension.[5]

The Board majority in this case did not discuss what weight, if any, it gave to the factor of extent of union organization. Nor indeed has the majority done so in any of its decisions since *Quaker City*.[6]

Looking at its actions, however, we have not found a single instance since *Quaker City* wherein the majority of the Board refused the debit insurance agent unit petitioned for by the Union. We would not consider this fact alone decisive for we would hesitate

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[5] The Regional Director apparently had the same difficulty for he concluded that it would be improper to limit the unit to offices located within the city limits of Chicago because such a unit would include certain areas in the suburbs and exclude certain other areas in the city. Therefore he directed an election by the employees in all of Metropolitan's offices in the greater Chicago area. *Metropolitan Life Ins. Co.*, 144 NLRB No. 15 (1963).

[6] Judge Boreman in his dissent in that case at page 696 found more than a hint that extent of union organization was again dominant in the Board's thinking. He wrote: "Indeed * * * the Board in stating the rationale of its determination to reverse the policy decision in Metropolitan, clearly indicates that its newly adopted policy is, in reality, based upon the extent of organization factor when it now says that the 'language of the Metropolitan Life case indicates that the rule was adopted *solely* in anticipation of broader organization on a company or state-wide basis, which at that time appeared imminent,' but that 'as a practical matter, however, such state or company-wide organization has not materialized.'"

to assume that the Board was subservient to the Union. Yet we believe this fact is entitled to considerable weight in the light of the testimony of the Union's vice-president in Metropolitan's Cleveland case, *supra,* which was incorporated by stipulation in the record in the instant case, that if the Union did not succeed in organizing on a broader basis it would as a matter of policy petition for a unit "on a district basis." Indeed it is apparent that the Union followed this policy in the present case for in May and June 1962 it had engaged in organizational activities among agents attached to all of the Company's 8 district offices and 2 detached offices in Rhode Island, and it was only after lack of success in its state-wide attempt that it sought and received the Board's acceptance of the single district office in Woonsocket.

In short, the Union naturally wants units in which it can win elections and on the basis of the Board majority's actions, which speak more clearly than its words, it seems to us evident that in this case the Board majority in keeping with its apparent practice in recent years has given the Union the unit it wants. In the absence of any statement by the Board majority of any other rational basis for its varying unit determinations, we can only conclude that the two member Board minority is correct in its charge that the majority has indeed reverted to its pre-1944 policy of regarding the extent of union organization as controlling in violation of § 9(c)(5) of the Act.

A decree will be entered setting the Board's order aside and denying the Board's cross-petition for enforcement.

DECREE

February 17, 1964

This cause came on to be heard upon petition to review and set aside and cross-petition for enforcement of an order of the National Labor Relations Board, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The order of the National Labor Relations Board of May 7, 1963, is hereby set aside, and the Board's cross-petition for enforcement is denied.

By the Court:

ROGER A. STINCHFIELD,
Clerk.

By /s/ *Dana H. Gallup,*
Chief Deputy Clerk.

Approved:
/s/ PETER WOODBURY,
Ch. J.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are as follows:

Sec. 8(a) It shall be an unfair labor practice for an employer—.

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

Sec. 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *.

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: * * *.

(c) (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

* * * * *

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

* * * * *

APPENDIX C

United States of America Before the National Labor Relations Board

Case No. 4–RC–4865

METROPOLITAN LIFE INSURANCE COMPANY, EMPLOYER

and

INSURANCE WORKERS INTERNATIONAL UNION, AFL–CIO, PETITIONER

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Joseph F. Rosenthal, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record[1] in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer with-

[1] Because, in our opinion, the record and briefs adequately set forth the issues and positions of the parties, the Employer's request for oral argument is hereby denied. Also, for the reasons hereinafter stated, the Employer's motion to dismiss the petition on the grounds that the unit petitioned for is inappropriate is hereby denied.

in the meaning of Section 9(c)(1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Petitioner seeks a unit of the Employer's two district offices located in the Wilmington, Delaware, metropolitan area. The Employer contends that the appropriate unit should consist of either (1) all its offices in the United States; (2) all offices in its Atlantic Coast Territory; or (3) all its offices in the State of Delaware. Otherwise, the parties are in agreement as to the composition of the unit.

The Employer is engaged in the sale and issuance of various types of insurance policies and does business throughout the United States and Canada. It maintains its principal office in New York, New York, and for administrative purposes, it has divided its offices throughout the United States into 14 territorial divisions. Each such division is headed by a superintendent of agencies who reports directly to a Company vice president. The offices sought by the Petitioner are included in the Employer's Atlantic Coast Territory, which encompasses the States of Delaware and Maryland, the City of Philadelphia, Pennsylvania, and all of the State of New Jersey, south of the cities of Bayonne and Elizabeth.

The Petitioner's unit would include both of the Employer's district offices in the greater Wilmington, Delaware, metropolitan area. The Employer's closest office to these, and its only remaining office in the State of Delaware, is located in Dover, which is 46 miles from Wilmington. The Employer's business operations are highly centralized and policies and procedures are established at the home office which governs the management of the district office and the duties and functions of the agents. The superintendent of agencies, whose office is located in New York,

has the responsibility for seeing that the offices in his territory operate in accordance with these Company directions, and in the course of his duties, the superintendent of agencies makes periodic visits to the offices in his territory.

Each district office has a manager in charge, who is the immediate supervisory authority over the agents in the office. Agents are required by Company regulations to perform all of their work through and subject to the general supervision and direction of the manager of the district office to which they are assigned.[2] The manager normally solicits applications for openings in his district, and, although he does not have the authority to hire an individual applicant, he may recommend that such action be taken. In carrying out his function as a recruiter, the manager accepts the prospective agent's application, conducts a personal interview, and orders a retail credit and medical report. The application, together with the manager's recommendation, is then forwarded to the superintendent of agencies in New York who makes the final determination. New agents receive their initial training in New York and are then assigned to a district office where they receive additional training under the guidance and direction of the manager and assistant manager. Although the agent spends the greater part of his time in his assigned territory selling industrial and other types of insurance, he is required to report to the district office twice a week and whenever the manager so directs. One day each week is devoted to a general meeting, at which the manager explains to his agents the latest Company directives.

[2] The parties have agreed to exclude the managers and assistant managers from the unit, apparently on the theory that they are supervisors within the meaning of the Act.

The manager regularly reviews the agent's performance and although he has no authority to terminate an agent's appointment, the manager may accept the agent's resignation, if tendered, or he may recommend to the superintendent of agencies that the agent be terminated. The manager may order an audit of the agent's accounts whenever he feels it is necessary, and in the event of a deficiency of 75 dollars or more in the agent's accounts, the manager is required to suspend him until further notice.

All labor relations' policies are established at the home office and all agents are subject to the same wage policies, employee benefits and working conditions. All bidding on job openings is limited to the agents of the particular district office where the opening occurs. There is virtually no interchange or transfer of agents among the various district offices and there is no business or social contact among agents except on the individual district office level. There is no history of collective bargaining affecting the employees involved in the instant proceeding.

In view of the foregoing, and the entire record, we find that the individual district office is in effect a separate administrative entity through which the Employer conducts its business operations, and therefore is inherently appropriate for purposes of collective bargaining. However, as we have previously stated,[3] this finding does not preclude the grouping of such offices where such grouping is justified by cogent geographic considerations. Therefore, as the Petitioner is seeking a unit comprising all of the Employer's offices in a separate and distinct area, the Wilmington, Delaware, metropolitan area, and as there is no history of collective bargaining covering

[3] *Metropolitan Life Insurance Company*, 138 NLRB [512].

employees in these offices and no union seeks a broader unit, we find that such a unit may be appropriate for purposes of collective bargaining.[4]

Accordingly, we find that the following employees at the Employer's district offices in the metropolitan Wilmington, Delaware, area, including the Brandywyne and Kirkwood offices, constitute a unit appropriate for collective bargaining purposes within the meaning of Section 9(b) of the Act:

> All debit insurance agents, including all canvassing regular and office account agents selling industrial life insurance and other forms of insurance sold by the Company, but excluding independent agents, retired agents, Metropolitan Insurance consultants, managers, assistant managers, cashiers, clerical employees, secretaries, professional employees, guards, watchmen and supervisors as defined in the Act.[5]

Direction of Election

An election by secret ballot shall be conducted among the employees in the unit found appropriate, in paragraph 4 above, as early as possible, but not later than 30 days from the date below. The Regional Director for the Region where this case was heard shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such

[4] *Ibid.*

[5] The unit description appears as amended and stipulated to at the hearing.

during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Insurance Workers International Union, AFL–CIO.

Dated, Washington, D.C.

FRANK W. MCCULLOCH,
Chairman,
JOHN H. FANNING,
Member,
GERALD A. BROWN,
Member,
National Labor Relations Board.

[SEAL]

PHILIP RAY RODGERS AND BOYD LEEDOM, *members,* dissenting:

For the reasons stated in our dissenting opinions in *Quaker City Life Insurance Company,* 134 NLRB No. 114, *Metropolitan Life Insurance Company,* 138 NLRB No. 64, and *Equitable Life Insurance Company,* 138 NLRB No. 70, we would find the unit sought inappropriate and dismiss the petition.

Dated, Washington, D.C.

PHILIP RAY RODGERS,
Member,
BOYD LEEDOM,
Member,
National Labor Relations Board.

APPENDIX D

United States Court of Appeals for the Third Circuit

No. 14,616

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE WESTERN AND SOUTHERN LIFE INSURANCE COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Argued February 17, 1964

Before KALODNER and HASTIE, *Circuit Judges* and KIRKPATRICK, *District Judge*

OPINION OF THE COURT

(Filed March 4, 1964)

PER CURIAM.

Metropolitan Life Insurance Company v. *National Labor Relations Board,* — F. 2d — (decided February 18, 1964) is dispositive of the issues presented.

The Order of the Board will be affirmed.

* * * * *

United States Court of Appeals for the Sixth Circuit

No. 15366

METROPOLITAN LIFE INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE AND ON CROSS PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Decided April 11, 1964

Before: MILLER and CECIL, Circuit Judges, and MCALLISTER, Senior Circuit Judge.

CECIL, *Circuit Judge.* This case is before the Court upon the petition of the Metropolitan Life Insurance Company to review and set aside an order of the National Labor Relations Board, respondent, issued against the petitioner on April 2, 1963, pursuant to Section 10(c) of the National Labor Relations Act. (Section 160(c), Title 29, U.S.C.) The respondent, by answer, has requested that the order be enforced. The petitioner and the respondent will be referred to hereinafter as the Company and the Board, respectively.

The Board found that the Company violated Section 8(a) (5) and (1) of the Act (Section 158(a) (1) and (5), Title 29, U.S.C.),[1] by refusing to bargain with the union[2] certified as the representative of a group of its employees. The Board's Decision and Order is reported at 141 NLRB 1074. The sole question presented here is whether the Board's determination of an appropriate unit (Section 159(b), Title 29, U.S.C.)[3] was controlled by the extent of union organization in violation of Section 9(c)(5) of the Act. (Section 159(c)(5), Title 29, U.S.C.)[4]

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[1] "(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title; * * *

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 159(a) of this title."

[2] Insurance Workers International Union, AFL-CIO.

[3] "(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this subchapter, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *"

[4] "(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling."

The unit as determined by the Board consists of nine district offices of the Company. Six of these offices are located in the city of Cleveland, Cuyahoga County, Ohio, and three are located in the metropolitan area of Cleveland. The three offices outside of the city of Cleveland are all in Cuyahoga County and are described as follows: Shaker Heights District in Cleveland Heights, Cuyahoga District in Parma and Lakewood District in Rocky River. These suburban offices are within eight or nine miles of the center of Cleveland. The nearest excluded office is in Akron, Summit County, Ohio, thirty miles from the center of Cleveland and approximately twenty-one miles from the nearest included office in Cuyahoga County.

The district offices are grouped into fourteen territorial divisions by the Company for administrative purposes. Each division is headed by a "superintendent of agencies" who reports directly to a Company vice-president. The offices here involved are in the Central Territory, a division composed of the states of Ohio, Indiana and West Virginia. The superintendent of agencies supervises the district offices in his territory. He maintains constant contact with the district offices and is responsible for: (1) the production of new business; (2) the servicing and conservation of existing business; (3) sales promotion activities; and, (4) recruiting, training, appraisal, appointment, transfer, termination, promotion, demotion and arrangement for retirement of agents, managers and assistant managers. In conjunction with the field management staff officers, he directs the creation and abolition of district offices and the alteration of boundary lines between districts. The superintendent of agencies, within his territory, has the

power to alter or amend rules, regulations and the forms of the Company.

Business policy of the Company is formulated at its home office and applied uniformly throughout the country. Applications for insurance are processed only at the home office. All business in Ohio is regulated by the state of Ohio. The Company must qualify to do business in the state and all policy forms must be approved by the State Insurance Department.

The district offices are directed by a manager and one or more assistant managers. Sales and administrative policies are prescribed by the home office and the manager has little discretionary authority. His duties are to administer the office in accordance with the policies set by the Company from its home office under supervision of the superintendent of agencies. The district manager has no final authority to hire or discharge employees or to process grievances. There is virtually no interchange or transfer of agents among the various district offices.

The Company contends that a unit should be first, the whole of the United States, or, second, an entire division, or, third, an entire state. There are about nine hundred district offices in the United States with approximately 20740 agents. In the Central Territorial Division there are sixty-eight offices with approximately 1556 agents. There are 1012 agents who work out of forty-four offices in the state of Ohio and in the nine offices here involved there are approximately 230 agents.

In 1944, the Board ruled that the smallest appropriate unit for insurance agents would thereafter be state-wide. *Metropolitan Life Ins. Co.*, 56 NLRB 1635. The Board consistently followed this standard until 1961 at which time it changed its policy and determined that a single district office was an appro-

priate unit for collective bargaining. *Quaker City Life Ins. Co.*, 134 NLRB 960. In that case the Board found that one district office in Alexandria, Virginia, was an appropriate unit. The union won an election and the Board certified it as the bargaining agent for the employees of that office. The Court of Appeals for the Fourth Circuit affirmed. *N.L.R.B.* v. *Quaker City Life Ins. Co.*, 319 F. 2d 690.

The Third Circuit upheld the Board in its certification of two out of three district offices in the state of Delaware as an appropriate unit. *Metropolitan Life Ins. Co.* v. *N.L.R.B.*, No. 14390, decided February 18, 1964, — F. 2d —. In this case the Brandywyne and Kirkwood offices were in the Wilmington area and the third one was forty-six miles from Wilmington.

The First Circuit denied enforcement of the Board's order where one district office out of ten in Rhode Island was certified as an appropriate unit. *Metropolitan Life Ins. Co.* v. *N.L.R.B.*, 327 F. 2d 906. In this case the Board found that the district office in Woonsocket was an appropriate unit. It was twelve miles away from the nearest office of the Company which was in Pawtucket. There were eight district offices and two detached offices in Rhode Island.

The Board has followed this changed policy throughout the country.[5] The Board is not bound by a rule once adopted if it determines subsequently that the reason for the rule fails and it does not act arbitrarily, unreasonably or in violation of the Act. *S.E.C.* v. *Chenery Corp.*, 332 U.S. 194; *N.L.R.B.* v.

[5] *Metropolitan Life Ins. Co.*, 144 NLRB No. 15, (Chicago area); *Metropolitan Life Ins. Co.*, 138 NLRB 734, (Iowa-North Dakota-South Dakota); *Equitable Life Ins. Co.*, 138 NLRB 529, (Cleveland area); *Western and Southern Life Ins. Co.*, 138 NLRB 538, (Pennsylvania).

National Container Corp., 211 F. 2d 525, C.A. 2; *Optical Workers' Union* v. *N.L.R.B.*, 227 F. 2d 687, C.A. 5, cert. den., 351 U.S. 963; *N.L.R.B* v. *Pittsburgh Plate Glass Co.*, 270 F. 2d 167, C.A. 4, cert. den., 361 U.S. 943. As the court said in *Metropolitan Life Ins. Co.* v. *N.L.R.B.*, No. 14390, C.A. 3, above cited: "It was the Board's informed view that the 1944 Metropolitan rule 'unfairly prejudiced the collective bargaining rights of employees.' There is a vast difference between taking away an obstacle to wider union organization and collective bargaining which is the explicit legislative purpose of the Act, and determining appropriate units on the basis of employee organization."

The Board has the authority under the Act to determine the appropriate unit for collective bargaining. (Section 159(b), Title 29, U.S.C.) It has wide discretionary powers in this respect. What is an appropriate unit is a question of fact to be determined by the Board upon the facts of each case. Its decision will not be disturbed except for an abuse of discretion or violation of the statute. *Packard Motor Car Co.* v. *N.L.R.B.*, 330 U.S. 485; *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146; *N.L.R.B.* v. *Prudential Ins. Co.*, 154 F. 2d 385, 388, C.A. 6; *N.L.R.B.* v. *Morgantown Full Fashioned Hosiery Co.*, 241 F. 2d 913, C.A. 4.

A unit as determined by the Board may be coextensive with union organization but the Act is not violated unless extent of organization is the controlling motive of the Board in making its determination. The Board found here that the grouping of the nine offices in the Cleveland area was justified by "cogent geographic considerations." It was stated in its opinion: "Therefore, as the Petitioner is seeking a unit comprising all of the Employer's offices in a sep-

arate and distinct geographic area in the City of Cleveland, Ohio, and as there is no recent history of collective bargaining and no union seeks a broader unit, we find that such a unit may be appropriate for purposes of collective bargaining." 138 NLRB 512, 515.

We conclude that the extent of union organization was not the controlling reason for the Board's determination of an appropriate unit in this case. Geographical considerations were not "simulated grounds" but the actual basis for the Board's decision. The Board did not violate either subsection (b) or (c)(5) of Section 159, Title 29, U.S.C.

Having determined that the unit for collective bargaining as fixed by the Board is an appropriate unit it follows that the order of the Board (141 NLRB 1074) must be enforced. It is so ordered.